

COUNTY AGREEMENT NUMBER 553360  
AGREEMENT WITH GARTNER, INC.

**Gartner, Inc. Service Agreement for the San Diego County Health and Human Services Agency  
("Client")**

This Service Agreement ("SA") – including the General Terms, Insurance Requirements, and all applicable Service Descriptions – constitutes the complete agreement between Gartner, Inc. of 56 Top Gallant Road, Stamford, CT 06904 ("Gartner") and Client of 7947 Mission Center Court San Diego, CA 92108 ("Client") for the Services (as defined below). Client agrees to subscribe to the following Services for the term and fees set forth below.

**1. DEFINITIONS AND ORDER SCHEDULE:**

**Services** are the subscription-based research and related services purchased by Client in the Order Schedule below and described in the Service Descriptions. Service Names and Levels of Access are defined in the Service Descriptions. Gartner may periodically update the names and the deliverables for each Service. If Client adds Services or upgrades the level of service or access, an additional Service Agreement will be required.

**Service Descriptions** describe each Service purchased, specify the deliverables for each Service, and set forth any additional terms unique to a specific Service. Service Descriptions for the Services purchased in this SA may be viewed and downloaded through the hyperlinks listed in Section 2 below or may be attached to this SA in hard copy, and are incorporated by reference into this SA.

<u>Service Name</u>	<u>Level of Access</u>	<u>Number of Users</u>	<u>Name of User to be Licensed</u>	<u>Contract Term Start Date</u>	<u>Contract Term End Date</u>	<u>Annual Fee Year 1 \$</u>	<u>Annual Fee Year 2 \$</u>	<u>Annual Fee Year 3 \$</u>
Gartner for IT Executives	CIO Signature	2	Richard McWilliams (Member) Joe Coyne (Delegate)	4/1/2016	3/31/2019	\$88,800	\$93,500	\$96,300
				<b>Total Services:</b>	<b>(Excluding applicable sales tax)</b>	\$88,800	\$95,300	\$96,300

(a) This SA is a promotional migration offer for a 3-year, non-cancellable term. Upon Year 3 Contract Term End Date any additional or renewal purchases shall be at the then-current State and Local Government price.

(b) Notwithstanding section (a) above, Client may terminate Years 2 and 3 of this SA, upon at least thirty days prior written notice, in the event Client does not receive appropriated funds from its funding authority, as a result of ordering activity cut-backs. However, if in the event the Client invokes its termination right herein, Client may not re-order the Service at the migration price but will be subject to Gartner's then-current State and Local Government price.

**2. SERVICE DESCRIPTIONS:**

<u>Service Name/ Level of Access</u>	<u>Service Description URL</u>
Gartner for IT Executives – CIO Signature	<a href="http://www.gartner.com/it/sd/sd_ite_cio_sig.pdf">http://www.gartner.com/it/sd/sd_ite_cio_sig.pdf</a>

**3. PAYMENT TERMS**

Gartner will invoice Client in advance for all Services. Payment is due 30 days from the invoice date. Client shall pay any sales, use, value-added, or other tax or charge imposed or assessed by any governmental entity upon the sale, use or receipt of Services, with the exception of any taxes imposed on the net income of Gartner.

Please attach any required Purchase Order ("**PO**") to this SA and enter the PO number below. If an annual PO is required for multi-year contracts, Client will issue the new PO at least 30 days prior to the beginning of each subsequent contract year. Any pre-printed or additional contract terms included on the PO shall be inapplicable and of no force or effect. This SA may be signed in counterparts.

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4. CLIENT BILLING INFORMATION

Purchase Order Number

Billing Address

Invoice Recipient Name

Invoice Recipient Email

Invoice Recipient Tel. No.

5. AUTHORIZATION

Client:

Gartner, Inc.

Christine C. Lee for  
Signature/Date

[Signature] 3/30/16  
Signature/Date

JOHN M. PELLEGRINO, Director  
Department of Purchasing & Contracting

David Harrison St. Account Executive  
Print Name and Title

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## General Terms

1. This SA for subscription-based research and related services (the "Services") is non-cancelable, and may be terminated only for material breach by either party, upon 30 days prior written notice, if the breach is not cured within the notice period.

2. **Ownership and Use of the Services.** Gartner owns and retains all rights to the Services not expressly granted to Client. Only the individuals named in this SA (each a "Licensed User") may access the Services. Each Licensed User will be issued a unique password, which may not be shared. Client agrees to review and comply with the *Usage Guidelines for Gartner Services* ("Guidelines"), which are accessible to all Licensed Users via the "Policies" section of gartner.com. Among other things, these Guidelines describe how Client may substitute Licensed Users, excerpt from and/or share Gartner research documents within the Client organization, and quote or excerpt from the Services externally.

3. **DISCLAIMER OF WARRANTIES.** THE SERVICES ARE PROVIDED ON AN "AS IS" BASIS, AND GARTNER EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE OR AS TO ACCURACY, COMPLETENESS OR ADEQUACY OF INFORMATION. CLIENT RECOGNIZES THE UNCERTAINTIES INHERENT IN ANY ANALYSIS OR INFORMATION THAT MAY BE PROVIDED AS PART OF THE SERVICES, AND ACKNOWLEDGES THAT THE SERVICES ARE NOT A SUBSTITUTE FOR ITS OWN INDEPENDENT EVALUATION AND ANALYSIS AND SHOULD NOT BE CONSIDERED A RECOMMENDATION TO PURSUE ANY COURSE OF ACTION. GARTNER SHALL NOT BE LIABLE FOR ANY ACTIONS OR DECISIONS THAT CLIENT MAY TAKE BASED ON THE SERVICES OR ANY INFORMATION OR DATA CONTAINED THEREIN. CLIENT UNDERSTANDS THAT IT ASSUMES THE ENTIRE RISK WITH RESPECT TO THE USE OF THE SERVICES.

4. **Client Confidential Information.** Gartner agrees to keep confidential any Client-specific information communicated by Client to Gartner in connection with this SA that is (i) clearly marked confidential if provided in written form, or (ii) preceded by a statement that such information is confidential, if provided in oral form, and such statement is confirmed in writing within 15 days of its initial disclosure. This obligation of confidence shall not apply to any information that: (1) is in the public domain at the time of its communication; (2) is independently developed by Gartner; (3) entered the public domain through no fault of Gartner subsequent to Client's communication to Gartner; (4) is in Gartner's possession free of any obligation of confidence at the time of Client's communication to Gartner; or (5) is communicated by the Client to a third party free of any obligation of confidence.

*Parties acknowledge that all records under this agreement may be subject to disclosure pursuant to federal and state laws, including but not limited to the California Public Records Act. Gartner agrees to hold Client harmless against any and all claims, causes of action, suits, demands, liability, or damages for compliance with applicable laws unless directly caused by the active negligence or willful misconduct of the Client.*

5. **Indemnity. (a) General Indemnity.** Gartner agrees to indemnify, defend and hold harmless the Client, its employees, officers and agents, from and against any third party claims, demands, loss, damage or expenses (including reasonable attorney's fees and court costs) relating to bodily injury or death of any person or damage to real and/or tangible personal property directly caused by the negligence or willful misconduct of the Gartner, its personnel, or agents during the course of the Services under this Agreement.

**(b) Intellectual Property Indemnity.** Upon notification of a claim against the Client alleging any Deliverable infringes a copyright, patent, trade secret or other intellectual property right of any third party, Gartner will defend such claim at its expense and will pay any costs or damages that may be finally awarded against the Client. Gartner will not indemnify the Client however, if the claim of infringement is caused by (1) Client's misuse or modification of the Deliverable; (2) Client's failure to use corrections or enhancements made available by Gartner; (3) Client's use of the Deliverable in combination with any product or information not owned or developed by Gartner. If any Deliverable is, or in Gartner's opinion is likely to be, held to be infringing, Gartner shall at its expense and option either: (a) procure the right for Client to continue using it, (b) replace it with a noninfringing equivalent, (c) modify it to make it noninfringing, or (d) direct the return of the Deliverable and refund to Client the fees paid for such Deliverable.

## 6. Miscellaneous

(a) **Assignability.** This SA and the rights granted to Client hereunder may not be assigned, sublicensed or transferred, in whole or in part, by either party without the prior written consent of the other party, except to a successor to substantially all of the business or assets of a party by merger or acquisition. Where consent is required, it will not be unreasonably withheld.

(b) **Arbitration.** Any unresolved dispute under this SA shall be decided by arbitration conducted in (TBD) before a single arbitrator under the administration of JAMS, in accordance with JAMS' Streamlined Arbitration Rules and Procedures. The decision of the arbitrator shall be final and binding, and the award may be entered in any court having jurisdiction. The prevailing party in any arbitration shall be entitled to an award of its reasonable attorneys' fees and costs, in addition to any award of damages or other relief.

(c) **Applicable Law.** This SA shall be governed by and construed in accordance with the procedural and substantive laws of the State of California, without reference to its conflict of law principles.

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(d) *Use of Name, Trademark, and Logo.* Absent the prior written consent of the other party, neither party shall use the name, trademarks, or logo of the other in promotional materials, publicity releases, advertising, or any other similar publications or communications.

(e) *No Third Party Beneficiaries.* This SA is for the benefit of the parties only.

(f) *Surviving Clauses.* Sections 3, 4, 5 and 6 (b), (c), (d), (e) and (f) shall survive the termination of this SA.

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**INSURANCE REQUIREMENTS**

Without limiting Contractor's indemnification obligations to County, Contractor shall provide at its sole expense and maintain for the duration of this contract, or as may be further required herein, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of the work by the Contractor, his agents, representatives, employees or subcontractors.

**1. Minimum Limits of Insurance**

Contractor shall maintain limits no less than:

- A. Commercial General Liability including Premises, Operations, Products and Completed Operations, Contractual Liability, and Independent Contractors Liability: \$2,000,000 per occurrence for bodily injury, personal injury and property damage. The General Aggregate limit shall be \$4,000,000.
- B. Automobile Liability: \$1,000,000 each accident for bodily injury and property damage.
- C. Employer's Liability: \$1,000,000 each accident for bodily injury or disease. Coverage shall include waiver of subrogation endorsement in favor of County of San Diego.
- D. Professional Liability: \$2,000,000 per claim with an aggregate limit of not less than \$4,000,000. Any self-retained limit shall not be greater than \$50,000 per occurrence/event without County Risk Management approval. If policy contains one or more aggregate limits, a minimum of 50% of any such aggregate limit must remain available at all times; if over 50% of any such aggregate limit has been paid or reserved, County will require additional coverage to be purchased by Contractor to restore the required limits. This coverage shall be maintained for a minimum of two years following termination of completion of Contractor's work pursuant to the Contract.

**2. Other Insurance Provisions**

The general liability and automobile liability policies are to contain, or be endorsed to contain the following provisions:

- A. Additional Insured Endorsement  
Any general liability policy provided by Contractor shall contain an additional insured endorsement applying coverage to the County of San Diego, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively.
- B. Primary Insurance Endorsement  
For any claims related to this Contract, the Contractor's insurance coverage shall be primary insurance as respects the County, the members of the Board of Supervisors of the County and the officers, agents, employees and volunteers of the County, individually and collectively. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- C. Notice of Cancellation  
Notice of Cancellation shall be provided in accordance with policy provisions.
- D. Severability of Interest Clause  
Coverage applies separately to each insured, except with respect to the limits of liability, and that an act or omission by one of the named insureds shall not reduce or avoid coverage to the other named insureds.

**General Provisions**

**3. Qualifying Insurers**

All required policies of insurance shall be issued by companies which have been approved to do business in the State of California by the State Department of Insurance, and which hold a current policy holder's alphabetic and financial size category rating of not less than A-, VII according to the current Best's Key Rating guide, or a company of equal financial stability that is approved in writing by County Risk Management.

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**4. Evidence of Insurance**

Prior to commencement of this Contract, but in no event later than the effective date of the Contract, Contractor shall furnish the County with certificates of insurance and amendatory endorsements effecting coverage required by this clause. Renewal certificates and amendatory endorsements shall be furnished to County within thirty days of the expiration of the term of any required policy. Contractor shall permit County at all reasonable times to inspect any required policies of insurance.

**5. Failure to Obtain or Maintain Insurance; County's Remedies**

Contractor's failure to provide insurance specified or failure to furnish certificates of insurance and amendatory endorsements or failure to make premium payments required by such insurance, shall constitute a material breach of the Contract, and County may, at its option, terminate the Contract for any such default by Contractor.

**6. Claims Made Coverage**

If coverage is written on a "claims made" basis, the Certificate of Insurance shall clearly so state. In addition to the coverage requirements specified above, such policy shall provide that:

- A. The policy retroactive date coincides with or precedes Contractor's commencement of work under the Contract (including subsequent policies purchased as renewals or replacements).
- B. Contractor will make every effort to maintain similar insurance during the required extended period of coverage following expiration of the Contract, including the requirement of adding all additional insured's.
- C. If insurance is terminated for any reason, Contractor shall purchase an extended reporting provision of at least two years to report claims arising in connection with the Contract.
- D. The policy allows for reporting of circumstances or incidents that might give rise to future claims.

**7. Waiver of Subrogation**

Contractor and County release each other, and their respective authorized representatives, from any Claims (as defined in the Article entitled "Indemnity" of the Contract), but only to the extent that the proceeds received from any policy of insurance carried by County or Contractor, other than any self-insurance, covers any such Claim or damage. Included in any policy or policies of insurance provided by Contractor hereunder shall be a standard waiver of rights of Subrogation against County by the insurance company issuing said policy or policies.